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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**Implementation of the
Subscriber Changes Provisions
of the Telecommunications Act
of 1996**

**Policies and Rules Concerning
Unauthorized Changes of Consumers'
Long Distance Carriers**

**Telephone USA of Wisconsin, LLC
Request for Waiver**

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CC Docket No. 94-129

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PETITION FOR WAIVER

Telephone USA of Wisconsin, LLC ("Telephone USA"), pursuant to Section 1.3 of the Commission's Rules, 47 CFR §1.3, hereby respectfully requests a limited waiver of the Commission's authorization and verification rules (47 CFR §§ 64.1100 - 64.1190) to the extent necessary to enable Telephone USA to transfer the local and intraLATA toll service subscribers of GTE North Inc. ("GTE") to Telephone USA's customer base without first obtaining such subscribers' authorization and verification. As demonstrated below, enforcement of the Commission's "slamming" rules under these unique circumstances would be useless, and on the contrary could cause inconvenience and confusion among customers, and could result in service disruptions. Telephone USA therefore fully satisfies the good cause standard established by the Commission's rules, 47 CFR § 1.3, and by *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), for securing a waiver.

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I. BACKGROUND

Telephone USA is purchasing 35 local exchanges from GTE (the "Exchanges"). A more complete description of the transaction was filed with the Commission in the Joint Application of Telephone USA and GTE for a Study Area Waiver, filed April 7, 2000.¹ GTE currently provides local, interLATA and intraLATA service in the Exchanges. Upon consummation of the transfer, Telephone USA will provide local and intraLATA service in cooperation with CenturyTel, Inc., and under the brand name CenturyTel. GTE has notified customers of its own service discontinuance in accordance with the Commission's rules, 47 CFR § 63.71(a).

II. THE REQUESTED WAIVER WILL ENSURE A SMOOTH TRANSITION FROM GTE TO TELEPHONE USA.

In connection with the purchase and sale of these Exchanges, GTE will discontinue local and intraLATA toll service within the Exchanges, and Telephone USA, under the brand name CenturyTel, concurrently will begin providing these services to all of GTE's customers in the Exchanges. The change in providers will be largely transparent to the customers in the Exchanges, as GTE's subscriber base is transferred to Telephone USA with no interruption in service. Telephone USA and CenturyTel initially will provide service using the same facilities GTE is currently using, and will quickly move to update these facilities and improve service quality. It will retain most of GTE's existing employees and will add additional employees to its Call Center and throughout the exchanges. IntraLATA toll service will be provided by Telephone USA and CenturyTel under similar terms and conditions as it was by GTE, and toll rates will be the same as or lower than the rates GTE now charges.

¹ See Public Notice, *GTE North, Inc. and Telephone USA of Wisconsin, LLC Seek Waiver of the Definition of "Study Area" in Part 36 of the Commission's Rules and Sections 61.41(c) and 69.3(e)(9) of the Commission's Price Cap Rules* (CCB rel. April 25, 2000).

Telephone USA, CenturyTel and GTE are taking great pains to ensure that the transition will be as smooth and as transparent to customers as possible. Each company has assembled a transition team with representatives from their various operational units, and these teams are working closely with one another to achieve their common goal. Both GTE and Telephone USA are taking numerous steps to ensure that customers are kept informed of the transition, and that the result of the transition and their options are explained in user-friendly terms. To that end, Telephone USA, CenturyTel and GTE have embarked on a cooperative campaign of customer notification.

In accordance with the Commission's rules, customers in the transferred exchanges will be notified of the transfer by a variety of means. Specifically, GTE, Telephone USA and CenturyTel plan to provide the following forms of notification:

- ⇒ GTE has advised customers of its service discontinuance in accordance with the Commission's rules. *See* 47 CFR § 63.71(a).
- ⇒ GTE is distributing a bill insert notifying customers of the transfer, and providing information about the CenturyTel-branded service the customers will receive as well as CenturyTel's toll-free customer service number.
- ⇒ A toll-free number will be established and operated to resolve any customer questions related to the sale of the Exchanges, or to Telephone USA and CenturyTel services generally.
- ⇒ Telephone USA will pay any applicable switching fees for customers wishing to select another service provider in connection with the sale of the Exchanges.
- ⇒ Telephone USA and CenturyTel will run a series of newspaper ads announcing the transfer, and familiarizing the public with the CenturyTel brand name.
- ⇒ Shortly before the transfer, Telephone USA and CenturyTel will send a welcome letter to all the transferred customers. The notice will inform customers that, as a result of the transfer, they will receive CenturyTel-branded service for local and intraLATA toll calling. The notice will also assure customers that Telephone USA and CenturyTel plan to provide service on the same or better terms and conditions as those they received from GTE.

Customers will also receive a list of key toll-free telephone numbers allowing them to contact various departments within Telephone USA and CenturyTel to answer specific questions relating to service, billing, or other issues.

- ⇒ Telephone USA and CenturyTel will send a final notification to all customers in the Exchanges in their first bill after the transfer. Customers will receive three easy-to-read bill inserts informing them of their ability to choose intraLATA toll carriers, familiarizing them with the new format of their bills, and explaining any changes in billing procedures.

This multi-step notice is substantially similar to the notice previously found by the Commission to “adequately protect the rights of . . . customers.” *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Sprint Communications Co., L.P. Request for Waiver*, DA 99-1112 (CCB rel. June 17, 1999). Such notice will likewise adequately protect customers here.

At all times, subscribers will remain free to switch to any other competing service provider. In order to minimize the burden and intrusion upon the transferred subscribers, however, Telephone USA does not plan to obtain the specific authorization of each customer to the transfer. It would be impractical to suspend the transaction’s closing pending the approval of each customer in the Exchanges, and GTE and Telephone USA do not wish to disrupt service to customers who fail to return a carrier change authorization prior to the closing date. Therefore Telephone USA seeks a waiver of the authorization and verification rules, which by their terms require carriers to obtain authorization from the subscriber prior to submitting or executing a change in the subscriber’s selection of service providers. 47 CFR § 64.1100(a). In this case, no purpose would be served by enforcement of the rule; rather it would burden both carriers and subscribers with unnecessary paperwork, create customer confusion, and hinder the ability to transition smoothly from one carrier to the other.

III. THERE IS GOOD CAUSE TO GRANT THE REQUESTED WAIVER

Section 1.3 of the Commission's rules permits the Commission to waive any provision of its rules upon "good cause shown." 47 CFR § 1.3. Under well-established precedent, the Commission may waive its rules if "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Northeast Cellular Tel. Co., L.P. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990). In considering a waiver petition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy. *See* Federal-State Joint Board on Universal Service, CC Dkt No. 96-45, *Memorandum Opinion and Order and Seventeenth Order on Reconsideration*, FCC 99-280 (rel. Oct. 13, 1999), at ¶ 28. In addition, the waiver should be consistent with the principles underlying the rule for which a waiver is requested. *See* United States Telephone Association Petition for Waiver of Part 32 of the Commission's Rules, *Order*, 13 FCC Rcd 214, 215 (CCB 1997). Based on these criteria, the Commission should waive its authorization and verification rules in this situation.

Under the Commission's rules, Telephone USA appears to be a "submitting carrier" with respect to subscribers within the Exchanges transferred from GTE to itself. Submitting carriers are required to verify all preferred carrier change orders before such changes can be executed. *See* 47 CFR § 64.1100(a)(1) ("No carrier shall submit a change on behalf of a subscriber prior to obtaining [authorization and verification]"); 47 CFR § 64.1150 ("No carrier shall submit a preferred carrier change order unless and until the order has first been confirmed in accordance with one of the following [verification] procedures..."). However, there is no point in enforcing the rules under these circumstances, and in fact such enforcement could be detrimental to the public interest, either step resulting in service disruptions to customers or

delaying consummation of the transaction—and thereby delaying Telephone USA’s planned improvements in service.

The unique circumstances presented here obviate the need for adherence to the Commission’s authorization and verification rules. As stated, the transfer in providers is essentially nominal. The underlying facilities will not change (except that they will be improved), nor will rates or other conditions of service. In fact, Telephone USA intends to build and expand upon the existing facilities in these exchanges, providing advanced telecommunications services, including voice mail, data and local Internet access, to these low-density communities. Moreover, all of GTE's current subscribers will receive multiple detailed notifications from both GTE and Telephone USA of the change in their service provider. Customers who for some reason do not care to receive from Telephone USA and CenturyTel better service at the same or better rates as the service they purchased from GTE will have ample opportunity to shop for alternatives. The Commission’s authorization and verification rules were not intended to reach this sort of situation. *See, e.g., Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Sprint Communications Co., L.P. Request for Waiver*, DA 99-1112 (CCB rel. June 17, 1999) (“The goal . . . is to eliminate the practice of ‘slamming’”). The Commission’s “slamming” concerns are not implicated here, where the purpose of the carrier change is to effectuate an efficiency-enhancing transfer of the Exchanges.

Moreover, the public interest favors waiver under these circumstances. Requiring that Telephone USA obtain verifiable authorization from each of GTE's subscribers before it can begin to provide service to those subscribers would disrupt an otherwise seamless transfer of service. At a minimum, enforcement of the rules under these circumstances would force

customers to spend such time as is necessary to actually submit their formal authorization – not a massive burden, to be sure, but a completely unnecessary inconvenience. Moreover, any request for a formal authorization is prone to be lost in the shuffle by customers who already receive multiple solicitations from telephone carriers. Additionally, customers could easily become confused if they are asked to authorize a change in service at the same time they are assured that service will remain the same.

Far worse, absent a waiver CenturyTel could face liability under the Commission’s rules if it continued to provide “1+” intraLATA toll service to customers who failed to submit a formal authorization. Given the thousands of subscribers involved, it seems unlikely that Telephone USA would be able to obtain authorization and verification from each of GTE's subscribers before GTE discontinues its operations in the Exchanges. Thus, absent a waiver, the seamless transfer of service providers envisioned by Telephone USA and GTE—and essential to the affected customers—may not occur. Enforcement could thus cause these subscribers severe inconvenience and confusion, and potentially force them to utilize alternative “dial-around” services which may be more expensive than the services they now receive from GTE and will continue to receive from Telephone USA and CenturyTel. *Cf., e.g., Sprint Communications, supra*, at ¶ 9.

Strict adherence to the Commission’s “slamming” rules under the unique circumstances of this case would be contrary to the public interest. Enforcement could interfere with an otherwise smooth transition of service, and could lead to significant customer confusion. The slamming rules were never intended to be applied to situations such as the instant transfer. The Commission should not force customers to fill out a special authorization just to retain their existing service without interruption. Because such enforcement would increase the burden on

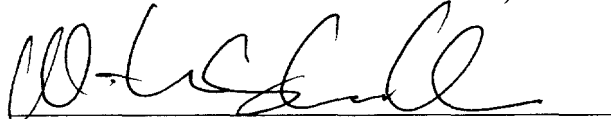
customers and potentially cause service interruptions, enforcement of the rule under these circumstances would be detrimental to the public interest. As stated, customers are being provided with notice of the change, and will have ample opportunity to choose another carrier.

The Commission has granted similar waivers under similar circumstances.² Because this case presents circumstances much like those under which the Commission previously has granted waivers, Telephone USA should likewise receive a waiver. *See, e.g., Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965).

Accordingly, Telephone USA respectfully requests that the Commission waive its authorization and verification rules as set forth herein.

Respectfully submitted,

TELEPHONE USA OF WISCONSIN, LLC.



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² See *Implementation of the Subscriber Changes Provisions of the Telecommunications Act of 1996, Broadwing Telecommunications, Inc. Petition for Waiver*, DA 00-748 (CCB rel. March 31, 1999). See also *Sprint Communications, supra*; *Implementation of the Subscriber Changes Provisions of the Telecommunications Act of 1996, EqualNet Corporation Request for Waiver*, DA 99-506 (CCB rel. March 15, 1999); *Implementation of the Subscriber Changes Provisions of the Telecommunications Act of 1996, CoreComm Limited Request for Waiver*, DA 99-893 (CCB rel. May 13, 1999); *Implementation of the Subscriber Changes Provisions of the Telecommunications Act of 1996, International Exchange Communications, Inc. Request for Waiver*, DA 99-894 (CCB rel. May 13, 1999).

CERTIFICATE OF SERVICE


I hereby certify that a copy of the foregoing Petition for Waiver was delivered by messenger on this, the 11th day of May, 2000, to the following individuals:

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